

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 17/1997

The Economic Development
Corporation of Goa, Daman & Diu
Ltd., Panaji, having office at EDC House
Dr. Atmaram Borkar Road,
Panaji, Goa.

..... Appellants.

V/s.

1. Deputy Collector,
Goa North Division, Panaji.

2. Shri Caetano de Mello
Resident of Mercedes Ilhas, Goa.

..... Respondents.

Mr. M. S. Sonak, with Mr. D. Pangam, Advocates for the appellants.

Mr. Nitin Sardessai, Advocate for the respondent No.2.

CORAM : R.M. LODHA, J.

DATE : 21st September, 2005.

ORAL JUDGMENT

This first appeal is at the instance of the Economic Development Corporation of Goa (for short 'the Corporation') aggrieved by the Judgment and Award dated 29/6/1996 passed by the Additional District Judge, Mapusa in Land Acquisition Case

No.31/1982. By the said Judgment and Award, the Additional District Judge, Mapusa enhanced the compensation in respect of the survey No.18/70 admeasuring 2300 sq. metres (for short, 'the subject-land') by fixing the market value on the date of publication of notification u/s 4 @ 65/- per sq. metre.

2. The Corporation needed land for its development project. By the Notification issued under Section 4 of the Land Acquisition Act on 10.7.1980 and published in the Official Gazette on 24.7.1980, the vast tract of land comprising 87,278 sq. metres was proposed to be acquired for the Corporation. The land sought to be acquired comprised of paddy fields, salt pans and nallah and that included the subject-land. The Notification under Section 6 of the Land Acquisition Act was published in the Official Gazette on 19.2.1981. The Land Acquisition Officer passed the Award fixing the market value of the subject-land (salt pan) @ Rs.12/- per sq. metre. It may not be out of place to mention here that as regards paddy field, the Land Acquisition Officer awarded compensation @ Rs.20/- per sq. metre, and for the nallah land, the compensation was fixed @ Re.0.50 per sq. metre. Many claimants sought reference from the Land Acquisition Officer and in all 28 land

acquisition cases were referred to the Additional District Judge, Mapusa. The present appeal arises out of Land Acquisition Case No.31/1982. The Additional District Judge vide his Judgment and Award dated 31.3.1987 fixed the market value of the land comprising of paddy fields @ Rs.100/- per sq. metre, for the land of salt pans @ Rs.65/- per sq. metre and in respect of nallah @ Rs.25/- per sq. metre. The Corporation preferred in all 28 appeals arising out of 28 land acquisition cases that were referred to the reference Court. In 27 appeals, this Court set aside the Award dated 31.3.1987 passed by the reference Court and remanded the matter back for fresh decision. It appears that one of the appeals preferred by the Corporation against the Judgment and Award dated 31.3.1987 being First Appeal No.81/1987 remained pending.

3. After remand, the reference Court vide its Judgment and Award dated 29.6.1996 maintained the compensation for the paddy fields @ Rs.100/- per sq. metre, for salt pans @ Rs.65/- per sq. metre and for nallah @ Rs.25/- per sq. metre. Aggrieved by the Judgment and Award dated 29.6.1996 passed by the reference Court, the Corporation preferred 27 appeals.

4. In the meanwhile, First Appeal No.81/87 arising out of the Judgment and Award dated 31.3.1987 that remained pending before this Court was decided by the Division Bench on August 23/27, 1996. That first appeal related to the acquisition of paddy field. The Division Bench allowed the appeal in part and reduced the market value from Rs.100/- to Rs.80/- per sq. metre. The Corporation dis-satisfied with the Judgment and Award of the Division Bench of this Court in First Civil Appeal No. 81/87 carried the matter in appeal to the Supreme Court. After grant of leave, the appeal was registered as Civil Appeal No.4431 of 1997. The Supreme Court modified the compensation granted by the Division Bench of this Court and further reduced the compensation for paddy fields from Rs.80/- per sq. metre to Rs.40/- per sq. metre.

5. Out of the 27 appeals that were preferred by the Corporation against the Judgment and Award dated 29.6.1996 passed by the reference Court, 24 first appeals have been disposed of by this Court. All these 24 first appeals were in respect of paddy fields. The learned Single Judge who heard the appeals was of the view that in the light of the Judgment of the Supreme Court dated 7th July, 1997 in Civil Appeal No.4431/1997

the compensation for paddy fields needed to be reduced to Rs.40/- per sq. metre and he did so. I am informed that the claimants have now approached the Supreme Court against the Judgments of the learned Single Judge and their appeals are pending.

6. In Civil Appeal No.4431/1997, the Supreme Court has fixed the market value @ Rs.40/- per sq. metre for the acquisition of paddy fields. The Judgment of the Supreme Court reads thus :

“ Though the respondents have been served, they are not appearing either in person or through counsel. Respondent No.2 has filed the Power of Attorney and the counter-affidavit.

Leave granted.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') was published on 10.7.1980 acquiring a large extent of land. Declaration under Section 6 was made on 7.9.1981. The Land Acquisition Officer awarded the compensation by his award dated May 2, 1981 @ Rs.20/- per sq. meter. On reference under Section 18, the District Judge by his award and decree dated 31.3.1987 enhanced the compensation to Rs.100/- per sq. meter. On further appeal, the High Court by its impugned judgment dated August 23, 1996 has partly allowed the appeal and reduced the market value

of the land from Rs.100/- per sq. meter to Rs.80/- per sq. meter. Thus, this appeal by special leave.

Admittedly, the lands are agricultural lands as found by the High Court on page 43 of the paper book. Therefore, the lands could not be as assessed on that date as developed lands. Under these circumstances, it would be agricultural land. Taking into consideration the facts and circumstances of this case, we think that Rs.40/- would be the appropriate compensation.

The appeal is accordingly allowed. The award and decree of the District Judge is modified to the above extent. The respondents are entitled to solatium and interest under the provisions of the Amended Act 68 of 1984 and additional amount under Section 21 of the Act. No costs."

7. A look at the Judgment of the Supreme Court would show that it was in the light of the facts and circumstances obtaining therein that the Supreme Court thought fit that Rs.40/- per sq. metre would be the appropriate compensation. The Supreme Court made this clear when it said, 'Taking into consideration the facts and circumstances of this case (emphasis supplied by me), we think that Rs. 40/- would be the appropriate compensation'.

8. The learned Counsel for the respondent No.2 invited my attention to the Judgment/Order of the Supreme Court passed on December 11, 2003 in Civil Appeal No.7853/1997 (***Comunidade of Morombi-O-Pequeno vs. State of Goa***). In that appeal before the Supreme Court, the compensation in respect of 6640 sq. metres of land in Panaji situate very close to the subject-land was the subject-matter. That land admeasuring 6640 sq. metres comprised of paddy land (admeasuring 1125 sq. metres), salt pans (admeasuring 2240 sq. metres) and nallah (admeasuring 3320 sq. metres) and was acquired for the purpose of establishing the Museum. It was not disputed before me by the learned Counsel for the Corporation as well as the learned Counsel for the claimant that the said land that was acquired for Museum was similarly situated land to the subject-land. The land admeasuring 6640 sq. metres for the purposes of establishing Museum was acquired pursuant to the Notification under Section 4 that was issued on 11/11/1977. In that case, the Land Acquisition Officer fixed the price for the paddy land @ Rs.11/- per sq. metre, for salt pans @ Rs.10/- per sq. metre and for nallah @ Rs.6/- per sq. metre. The matter of compensation after the Judgment and Award of the reference Court and the High Court was carried to the Supreme

Court. The Supreme Court fixed the market value for paddy land @ Rs.80/- per sq. metre, for salt pans @ Rs.60/- per sq. metre and for the nallah @ Rs.20/- per sq. metre on the date of publication of Notification under Section 4 in the year 1977. The Supreme Court in its Judgment dated December 11, 2003 considered the matter thus :

“ Section 4 Notification was issued on 11th November, 1977 for the purposes of acquiring 6640 sq. metres land in Panaji. The land was being acquired for the purpose of establishing a Museum. It is an admitted position that out of 6640 sq. metres land 1125 sq. metres land were paddy land, 2240 sq. metres were salt pans and 3320 sq. metres were a nallah. An award came to be passed by the Land Acquisition Officer on 21st March, 1978. He fixed a price at Rs.11/- per sq. metre for paddy land, Rs.10/- per sq. metre for salt pan and Rs.6/- per sq. metre for nallah. The Land Acquisition Officer also apportioned the compensation on the basis that $\frac{1}{3}$ rd of the compensation, for paddy land, to be given to the appellants (herein) and the rest to be given to the tenant; for the salt pan $\frac{4}{5}$ th to the appellants and $\frac{1}{5}$ th to the tenant and for the nallah the entire compensation was given to the appellants.

The appellants filed a reference which was disposed of by a Judgment dated 27th February, 1990. Before the Reference Court the appellants led the evidence of two witnesses AW-1 and AW-2. AW-1 was the Power of Attorney holder of the appellants. AW-2 was a Civil Engineer who gave evidence of valuation of the acquired land and proved a certificate dated 5th February, 1963 which showed that the acquired land was within commercial zone. The appellants also relied upon other awards passed in respect of other lands which had been acquired. One of the awards, in LA Case No. 2 of 1979 was marked as 'Ex-A3' by consent of the parties.

The Reference Court considered the entire evidence and noted that it was proved that there was development all around the acquired land. The Reference Court took into account the other award which was in respect of acquisition of the land of the appellants itself for the Tourism Department. This land was situated just 200 metres from this land. On the basis of evidence before it the Reference Court concluded that the figures given by AW-2 were reliable figures. The Reference Court accepted those figures and fixed price at Rs. 80/- per sq. metre for paddy land, Rs. 60/- per sq. metre for the salt pan and Rs. 20/- per sq. metre for the nallah. The Reference

Court apportioned compensation 50:50 between the appellants and the tenant in respect of paddy field. The Reference Court awarded solatium under Section 23(2) and interest under Sections 28 and 23(1)(A).

The respondents filed an appeal before the High Court. The High Court has, by the impugned judgment, allowed this appeal. The High Court has held that the paddy field was subject to tenancy rights. The High Court has held that unless this land was made suitable by necessary filling of mud and other necessary development, it could not be presumed that the land would be suitable for construction activity. The High Court held that there was no material on record to show as to what would be the cost of transforming the paddy field and salt pan into a land suitable for construction activity. The High Court has held that in the absence of any evidence on this point, there was no scope for argument that the land was suitable for construction activity. The High Court has held that even though the land in Case No. 2 of 1979 were merely 200 metres away that by itself was not sufficient to establish comparability of those land with the acquired land. The High Court has held that merely because those lands were also paddy lands was not sufficient to draw a

conclusion that the acquired land should also be awarded at the same rate. The High Court has held that factors such as length and width of the land, the level of the land, type of the soil, location etc. are the various factors which are required to be looked into and considered for the purposes of comparison between the land in question with the land which was the subject matter of Land Acquisition Case No. 2 of 1979. The High Court has held that there was no evidence on these factors. The High Court has held that it could not be said that the two lands were comparable. The High Court then relied on another Judgment delivered by it on 19th February, 1997 in First Appeal No. 38/1990 and held that all points raised in the present case were covered by that Judgment. The High Court set aside the award of the Reference Court on this basis.

We have heard the parties at great length. In our view the High Court has fallen into error in coming to the conclusion that there was no evidence on record in respect of developmental costs. The High Court had noticed that the award in Land Acquisition Case No. 2 of 1979 had been marked as an Exhibit by consent. The Reference Court had also called for the record of that case and looked into that record. The

Reference Court had found that the two lands were comparable. In that award developmental costs were taken into account. Further the High Court completely overlooked the evidence of AW-2. During the course of his evidence he produced and proved, as an expert, a report prepared by him. In that report he had, inter alia, given the cost of development. This was as follows:-

' Therefore in order to fix the price of the land following deductions are made:

- (a) $\frac{225}{2.5} \times 1.5 = 135/-$
- (b) From 135/- , 15% is deducted for open space i.e. 20.20 per sq.m.
- (c) 5% for light and water i.e. 6.25 per sq.m.
- (d) 5% for asphaltting or road i.e. 6.25 per sq.m.
- (e) 30 cm of filling as per GSR rate 1974 which amounts to Rs. 10.82 which corresponds to 3.25 for paddy field only.
- (f) Additional filling of 50 cms for salt pan which corresponds to Rs. 8.65 per sq.m.
- (g) For nallahs which are about 2m depth the cost of filling corresponds to Rs. 32.50 per sq.m.'

Thus a detailed cost analysis for development

purposes had been given by the witness of the appellant. The High Court overlooked the fact that on this aspect this witness was not cross examined. On this aspect the respondents had led no contrary evidence. Therefore there was evidence of what the development cost would be. After taking into consideration the development cost and considering the fact that certain portions of the acquired land were paddy lands, salt pans and nallah the figures of Rs. 80/- , 60/- and 20/- had been worked out.

It was submitted before us on the basis of the authority in the case of M. B. Gopala Krishna And Others vs. Special Deputy Collector, Land Acquisition reported in (1996) 3 SCC 594 that admittedly the acquired land was tenanted. It was submitted that the tenanted lands would not fetch the same amount as the land on which there were no tenants. This is not a reasoning on which the High Court has based the impugned Judgment. Further the tenants were only on the paddy land and the salt pans. Further the price of Rs. 80/- , 60/- and 20/- is arrived at after taking into consideration that these are tenanted land. Therefore we see no substance in this submission.”

9. I am faced with the two Judgments of the Supreme

Court. It is not in dispute that the compensation for the land that was under consideration in the case of Comunidade of Morombi-O-Pequeno, particularly salt pan land before the Supreme Court is exactly identical and similar to the subject-land. That land was acquired pursuant to the Notification issued under Section 4 of the Land Acquisition Act on 11.11.1977 i.e. about three years prior to the Notification under Section 4 of the Land Acquisition Act whereby the subject-land was sought to be acquired. In that case for the salt pan land situated very close to the subject-land which was acquired in the year 1977, the market value was fixed @ Rs.60/- per sq. metre. In the other case viz. Civil Appeal No. 4431/1997 for the acquisition of paddy fields under the same Notification whereunder the subject-land was acquired, the Supreme Court has fixed the compensation @ Rs.40/- per sq. metre. In Civil Appeal No. 4431/1997, the attention of the Supreme Court was not invited to its earlier Judgment dated December 11, 2003; it could not have been as the claimants were not represented in Civil Appeal No. 4431/1997. Moreover, the Judgment in Civil Appeal No. 4431/1997 is confined to the facts and circumstances in that case as has been made clear in the Judgment itself. Having given thoughtful reflection over the matter,

I find no justifiable reason in not applying the Judgment of the Supreme Court dated December 11, 2003 in the case of Comunidade of Morombi-O-Pequeno to the facts of the present case. As a matter of fact, the Judgment/Order of the Supreme Court dated 11.12.2003 is applicable on all fours to the case in hand.

10. It may also be noticed here that there is evidence on record which suggests that earlier to the acquisition of subject-land, by Notification dated 12.7.1977 two plots of land at Panaji close to the subject-land was acquired for the office complex of the Corporation itself. One of these plots had an area of 4604 sq. metres, which was originally a salt pan but at the time of acquisition was not put to any use being water logged. The Land Acquisition Officer assessed the market value of the that land @ Rs.20/- per sq. metre. In the reference being Land Acquisition Case No.19/1980, the reference Court enhanced the compensation and fixed the market value at the rate of Rs.100/- per sq. metre. The Judgment and Award dated 13.2.1985 passed by the reference Court is part of the record. The learned Counsel for the Corporation could not show as to why the compensation awarded

by the reference Court in Land Acquisition Case No.19/80 was not applicable to the facts of the present case. If for the similarly situated land (salt pan) acquired vide Notification dated 12.7.1977, the market value was fixed by the reference Court at Rs.100/- per sq. metre (there being nothing to show that the said Award had not attained the finality); there is nothing to show that price of the land in Panaji went southwards, I find no reason why the market value of the subject-land which was acquired vide Notification published under Section 4 on 24.7.1980 should be reduced from Rs.65/- per sq. metre. Thus, the evidence on record also suggest that the prevalent market value of the subject land was about Rs.65/- per sq. metre on the date of publication of notification under Section 4.

11. I am not oblivious to the fact that in Civil Appeal No. 4431/1997 for the paddy fields that surround the subject-land, the Supreme Court has fixed the market value @ Rs.40/- per sq. metre and based on that the learned Single Judge has fixed Rs. 40/- per sq. metre in respect of the paddy fields and ordinarily the market value of salt pan lands would be less than that but for the reasons already indicated above and the evidence that has come on

record in the present case and in the light of the Judgment of the Supreme Court dated 11.12.2003, I find no ground, much less justifiable ground for interfering with the Judgment and Award of the reference Court fixing the market value at the rate of Rs. 65/- per sq. metre.

12. The first appeal is, accordingly, dismissed with no order as to costs.

R.M. LODHA, J.

ssm.